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FROM THE FILE

ORDINANCE NO. 02-01-297

THE EFFECTIVE DATE OF THIS ORDINANCE IS February 1, 2002

RE: LOCAL PROGRAM FOR THE PRESERVATION
OF AGRICULTURAL LAND AND PURCHASE OF
AGRICULTURAL LAND PRESERVATION EASEMENTS THROUGH AN
INSTALLMENT PURCHASE PROGRAM

PREAMBLE

Frederick County currently has an active Agricultural Preservation Program;

Frederick County wishes to supplement its existing local program to encourage the preservation of agricultural land and to protect and preserve farming;

Frederick County is an active participant in the Maryland Agricultural Land Preservation Program with over 13,184 acres under easement or under contract for easement settlement and another 11,148 acres covered by District Agreements;

It is important to protect the agricultural viability of areas of the county where many farms are already under easement by assisting owners who wish to preserve the land for permanent agricultural use;

The Maryland Agricultural Land Preservation Program does not provide adequate certainty of easement purchase to prevent farms, whose preservation in agricultural activity is desired, from being subdivided into residential lots or otherwise developed;

Frederick County has created and utilized a Land Preservation Program for the Preservation of Critical Farms since 1994 and the County currently holds Agricultural Preservation easements on 1,245 acres including Critical Farms Option Agreements and County held Land Preservation Easements;

Frederick County would like to accelerate the acquisition of land preservation easements before development options are considered and purchase these easements at present value;

Frederick County would like to provide unique financial and tax advantages to farmers so that Frederick County can successfully compete with developers;

Frederick County is authorized to enter into installment purchase agreements to acquire development rights on lands located within Frederick County; and

FILED

JAN 29 2 35 PM '02

SANDRA K. DALTON

PC! CAD, PLANNING, LAND PRESERVATION PROGRAM (BLASER), CROSSVILLE FILE

A duly advertised public hearing on this Ordinance was held on January 18, 2002. The public had an opportunity to comment at this public hearing.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that a new Section 1-13-35 be added to the Frederick County Code and this Ordinance is hereby approved and adopted to read as follows:

SEC. 1-13-35. INSTALLMENT PURCHASE PROGRAM

(A) *PURPOSE.* THERE IS HEREBY CREATED IN FREDERICK COUNTY AN INSTALLMENT PURCHASE PROGRAM FOR THE PURPOSE OF ACCELERATING LAND PRESERVATION EASEMENT PURCHASES AND PROVIDING AN ADDITIONAL LAND PRESERVATION PROGRAM FOR THE LANDOWNERS AND CITIZENS OF FREDERICK COUNTY. THIS ORDINANCE IS CREATED WITH THE FURTHER PURPOSE TO PRESERVE PRODUCTIVE AGRICULTURAL LAND AND WOODLAND WHICH PROVIDES FOR THE CONTINUED PRODUCTION OF FOOD AND FIBER FOR THE CITIZENS OF THE COUNTY AND TO PROTECT FARMLAND/OPEN SPACE FROM THE IMPACTS FROM DEVELOPMENT.

(B) *DEFINITIONS*

INSTALLMENT PURCHASE PROGRAM MEANS THE FREDERICK COUNTY AGRICULTURAL LAND PRESERVATION INSTALLMENT PURCHASE PROGRAM.

INSTALLMENT AGREEMENT MEANS AN INSTALLMENT PURCHASE AGREEMENT BETWEEN FREDERICK COUNTY AND THE SELLER.

ADVISORY BOARD MEANS THE FREDERICK COUNTY AGRICULTURAL PRESERVATION ADVISORY BOARD.

DEPARTMENT MEANS THE FREDERICK COUNTY, MARYLAND PLANNING DEPARTMENT

EASEMENT MEANS AN AGRICULTURAL LAND PRESERVATION EASEMENT, WHICH LIMITS THE LAND TO AGRICULTURAL OR WOODLAND LAND USES AND PROHIBITS RESIDENTIAL,

COMMERCIAL AND INDUSTRIAL DEVELOPMENT EXCEPT IN ACCORDANCE WITH THE TERMS OF THE EASEMENT.

U.S.D.A. MEANS THE UNITED STATES DEPARTMENT OF AGRICULTURE

(C) *QUALIFYING CRITERIA*

(1) *SOIL CRITERIA.* PROPERTIES FOR WHICH A LANDOWNER HAS MADE APPLICATION FOR APPROVAL UNDER THE FREDERICK COUNTY AGRICULTURAL LAND PRESERVATION INSTALLMENT PURCHASE PROGRAM MUST MEET ONE OF THE FOLLOWING CRITERIA AS DEFINED IN THE FREDERICK COUNTY SOIL SURVEY:

- A. MINIMUM OF 50% U.S.D.A. CLASS I, II AND III SOILS
- B. MINIMUM OF 50% U.S.D.A. WOODLAND GROUPS I AND II
- C. A COMBINATION OF FARMLAND AND WOODLAND WITH A MINIMUM OF 60% U.S.D.A. CLASS I, II AND III SOILS AND U.S.D.A. WOODLAND GROUPS I AND II

(2) *SIZE CRITERIA.* THE MINIMUM SIZE FOR PROPERTIES ENTERING THE INSTALLMENT PURCHASE PROGRAM SHALL BE 50 ACRES PROVIDED HOWEVER FARMS WITH LESS THAN 50 ACRES MAY ENROLL IN THE PROGRAM IF CONTIGUOUS TO A PROPERTY OF 50 ACRES OR GREATER WHICH IS ALREADY UNDER EASEMENT IN THE PROGRAM OR IN CONJUNCTION WITH OTHER APPLICATIONS FOR PROPERTIES WHICH IN COMBINATION MEET OR EXCEED 50 ACRES.

(3) *LOCATIONAL CRITERIA.* PROPERTIES CONSIDERED FOR THE FREDERICK COUNTY AGRICULTURAL LAND PRESERVATION INSTALLMENT PURCHASE PROGRAM EASEMENT SHALL BE LOCATED IN A NO PLANNED SERVICE DESIGNATION (N.P.S.) IN THE ADOPTED WATER AND SEWERAGE PLAN. THE BOARD OF COUNTY COMMISSIONERS MAY APPROVE A PROPERTY FOR EASEMENT PURCHASE WITHIN A WATER AND SEWER SERVICE AREA UPON A SPECIFIC FINDING THAT THE LAND HAS

EXTRAORDINARY AGRICULTURAL CAPABILITY, IS OF SIGNIFICANT SIZE AND HAS THE POTENTIAL TO BE PART OF A LARGER AREA OF CONTIGUOUS PRESERVED LAND. PRIOR TO ANY APPLICATION BEING FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS IT SHALL BE REFERRED TO THE FREDERICK COUNTY PLANNING COMMISSION FOR REVIEW AND COMMENT.

- (4) *OTHER CRITERIA.* LANDOWNERS APPLYING FOR SALE OF A DEVELOPMENT RIGHTS EASEMENT UNDER THE INSTALLMENT PURCHASE PROGRAM MUST HAVE FURTHER SUBDIVISION RIGHTS UNDER THE PROVISION OF THE FREDERICK COUNTY ZONING ORDINANCE PROVIDED HOWEVER PROPERTIES WITHOUT FURTHER SUBDIVISION RIGHTS MAY BE PERMITTED TO BE CONSIDERED IF THE PROPERTY MEETS ALL OTHER CRITERIA ABOVE AND ANY PORTION OF THE PROPERTY IS LOCATED WITHIN 2000 FEET OF A COMPREHENSIVE PLAN GROWTH AREA.

(D) *APPLICATION FOR SALE OF DEVELOPMENT RIGHTS.* AN OWNER OF AGRICULTURAL LAND WHICH MEETS THE MINIMUM QUALIFICATIONS SET FORTH MAY MAKE APPLICATION TO SELL TO THE COUNTY IN (C) ABOVE AN EASEMENT ON THE ENTIRE CONTIGUOUS ACREAGE OF THE LAND LESS ONE ACRE PER EXISTING DWELLING LOCATED ON THE SUBJECT PROPERTY.

THE APPLICATION SHALL BE MADE ON A FORM PROVIDED BY THE COUNTY AND BE ACCOMPANIED BY A PLAT OR MAP OF THE PROPERTY AT A SCALE OF NO SMALLER THAN ONE INCH EQUALS SIX HUNDRED FEET. EACH APPLICATION SHALL ALSO INCLUDE A CERTIFICATE THAT A SOIL CONSERVATION PLAN APPROVED BY THE SOIL CONSERVATION DISTRICT FOR THE PROPERTY HAS BEEN MADE OR REVISED WITHIN THE LAST TEN YEARS FROM THE DATE OF THE APPLICATION. APPLICATIONS FOR EASEMENT SALE UNDER THE INSTALLMENT PURCHASE PROGRAM SHALL BE ACCEPTED BY THE PLANNING DEPARTMENT ANNUALLY UNTIL SEPTEMBER 1 OF EACH YEAR. THE BOARD OF COUNTY COMMISSIONERS MAY AUTHORIZE THE DEPARTMENT TO ACCEPT APPLICATIONS BI-ANNUALLY BASED UPON A RECOMMENDATION OF THE ADVISORY BOARD. ALL APPLICATIONS SHALL BE FORWARDED TO THE ADVISORY BOARD FOR REVIEW. THE BOARD OF COUNTY COMMISSIONERS UPON A RECOMMENDATION FROM THE ADVISORY BOARD MAY LIMIT THE

NUMBER OF APPLICATIONS TO BE CONSIDERED BASED ON AVAILABLE FUNDING AND THE TIMING TO PROCESS THE APPLICATIONS AND MAKE SETTLEMENT.

EACH APPLICATION SHALL BE REVIEWED ACCORDING TO THE FREDERICK COUNTY AGRICULTURAL LAND PRESERVATION INSTALLMENT PURCHASE PROGRAM RANKING SYSTEM AND RANKED FROM HIGHEST SCORE TO LOWEST. THE FREDERICK COUNTY AGRICULTURAL PRESERVATION ADVISORY BOARDS' RECOMMENDATION AND RANKING SHALL BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR APPROVAL. OFFERS TO PURCHASE AGRICULTURAL PRESERVATION EASEMENTS SHALL BE MADE TO THE HIGHEST RANKED FARM FIRST WITH ADDITIONAL OFFERS MADE IN DESCENDING ORDER ACCORDING TO THE RANKING SYSTEM. THE COUNTY MAY MODIFY THIS PROCEDURE IF ADEQUATE FUNDING IS NOT AVAILABLE FOR THE NEXT RANKED PROPERTY OWNER WHO WOULD HAVE RECEIVED AN OFFER IF FUNDS WERE AVAILABLE.

(E) *RANKING.* THE ADVISORY BOARD SHALL ESTABLISH A RANKING SYSTEM FOR THE INSTALLMENT PURCHASE PROGRAM WHICH SHALL AT A MINIMUM CONSIDER SOIL PRODUCTIVITY, DEVELOPMENT THREATS AND PRESSURES, CONTRIBUTION TO A MASS OF PRESERVED LAND AND GOOD SOIL CONSERVATION PRACTICES AND STEWARDSHIP. THE RANKING SYSTEM SHALL BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR APPROVAL. THE FREDERICK COUNTY AGRICULTURAL LAND PRESERVATION INSTALLMENT PURCHASE PROGRAM RANKING SYSTEM MAY BE AMENDED OR REVISED FROM TIME TO TIME.

(F) *VALUATION OF THE EASEMENT.* THE BASE VALUE FOR ACQUISITION OF DEVELOPMENT RIGHTS UNDER THE INSTALLMENT PURCHASE PROGRAM SHALL BE ESTABLISHED AT ONE THOUSAND DOLLARS (\$1,000.00) PER ACRE FOR QUALIFYING PROPERTIES. ADDITIONAL VALUE ABOVE ONE THOUSAND DOLLARS (\$1,000.00) PER ACRE WILL ACCRUE FOR PROPERTIES BASED UPON THE APPROVED RANKING SYSTEM WITH A VALUE ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS UPON A RECOMMENDATION BY THE ADVISORY BOARD. PROPERTIES WHICH CONTAIN NO FURTHER SUBDIVISION RIGHTS UNDER THE PROVISIONS OF THE FREDERICK COUNTY ZONING ORDINANCE AND ARE LOCATED WITHIN TWO THOUSAND FEET OF A COMPREHENSIVE

PLAN GROWTH AREA SHALL BE ELIGIBLE FOR THE BASE VALUE WITH NO ADDITIONAL VALUE ACCRUED THROUGH THE RANKING SYSTEM.

(G) *METHOD OF PAYMENT.* THE LANDOWNER AND COUNTY SHALL ENTER INTO AN INSTALLMENT PURCHASE AGREEMENT (I.P.A.). THE AGREEMENT SHALL STATE THE TOTAL AMOUNT OF MONEY THAT THE COUNTY HAS AGREED TO PAY THE LANDOWNER AND SET THE TERMS OF THE SALE INCLUDING THE INTEREST RATE. THE INSTALLMENT PURCHASE AGREEMENT SHALL BE FOR A TERM OF NOT LESS THAN 10 NOR MORE THAN 20 YEARS WITH INTEREST AND A SMALL PORTION OF THE PRINCIPAL BEING PAID ANNUALLY. AT THE END OF THE TERM THE LANDOWNER WILL RECEIVE A LUMP SUM PAYMENT CONSTITUTING THE BALANCE OF THE PRINCIPAL. THIS AGREEMENT IS EXEMPT FROM THE PROVISIONS OF SECTIONS 9, 10 AND 11 OF ARTICLE 31 OF THE ANNOTATED CODE OF MARYLAND.

ALTHOUGH PREFERENCE IS GIVEN TO INSTALLMENT PURCHASE EASEMENT ACQUISITIONS, A LANDOWNER MAY REQUEST THAT DEVELOPMENT RIGHTS BE PURCHASED IN LUMP SUM. UPON A RECOMMENDATION OF THE ADVISORY BOARD AND THE FREDERICK COUNTY DEPARTMENT OF FINANCE. THE BOARD OF COUNTY COMMISSIONERS MAY APPROVE A LUMP SUM PAYMENT.

(H) *RECORDING OF THE EASEMENT.* A DEED OF EASEMENT, RESTRICTING, IN PERPETUITY, FUTURE DEVELOPMENT ON THE PROPERTY, SHALL BE RECORDED IN THE FREDERICK COUNTY LAND RECORDS. THE FORM OF THE DEED OF EASEMENT SHALL BE APPROVED BY THE BOARD OF COUNTY COMMISSIONERS UPON A RECOMMENDATION OF THE FREDERICK COUNTY AGRICULTURAL PRESERVATION ADVISORY BOARD AND THE OFFICE OF THE FREDERICK COUNTY ATTORNEY.

(I) *AGRICULTURAL PRESERVATION EASEMENT.* UPON ESTABLISHMENT OF AN AGRICULTURAL PRESERVATION EASEMENT, A LANDOWNER AGREES TO THE FOLLOWING CONDITIONS:

TO MAINTAIN THE LAND IN AGRICULTURAL USE OR PROPERLY MANAGED SO THAT IT IS AVAILABLE FOR CONTINUED AGRICULTURAL USE FROM THE DATE THAT THE EASEMENT IS RECORDED IN THE LAND RECORDS OF FREDERICK COUNTY.

TO IMPLEMENT AND MAINTAIN A SOIL AND WATER CONSERVATION PLAN AS PREPARED BY THE SOIL CONSERVATION DISTRICT. SUCH PLAN SHALL BE KEPT ON FILE IN THE OFFICES OF THE DEPARTMENT AND THE DISTRICT OFFICE OF THE SOIL CONSERVATION SERVICE.

THAT THE EASEMENT AGREEMENT CREATES AN ENCUMBRANCE UPON THE LAND, AND BINDS FUTURE OWNERS, HEIRS, SUCCESSORS OR ASSIGNS AND PRECLUDES THE SUBDIVISION AND UTILIZATION OF THE LAND PRINCIPALLY FOR USES SUCH AS RESIDENTIAL, INSTITUTIONAL, COMMERCIAL OR INDUSTRIAL EXCEPT AS CONTAINED WITHIN THIS ORDINANCE OR THE DEED OF EASEMENT APPROVED BY THE BOARD OF COUNTY COMMISSIONERS. ANY AGRICULTURAL USES CURRENTLY PERMITTED WOULD BE ALLOWED TO CONTINUE UNDER THIS AGREEMENT. THE EASEMENT AGREEMENT SHALL NOT PROVIDE FOR PUBLIC ACCESS TO ANY PRIVATELY OWNED LAND. PURCHASE OF AN EASEMENT BY THE COUNTY DOES NOT CREATE A RIGHT OF PUBLIC ACCESS TO THE LAND.

IN ADDITION TO ANY OTHER REQUIREMENTS, THE CONSTRUCTION OF NEW BUILDINGS OR STRUCTURES ON THE LAND, OTHER THAN FARM BUILDINGS, IS CONTINGENT UPON THE WRITTEN APPLICATION TO AND APPROVAL BY THE DEPARTMENT, SUBJECT TO REVIEW BY, AND RECOMMENDATION OF, THE FREDERICK COUNTY AGRICULTURAL ADVISORY BOARD.

(J) *ADDITIONS TO EXISTING EASEMENTS.* THE PROCESS FOR ADDING LAND TO EXISTING EASEMENTS SHALL BE THE SAME AS FOR THE INITIAL ESTABLISHMENT OF AN EASEMENT. THE ADVISORY BOARD MAY ESTABLISH A MINIMUM SIZE CRITERION FOR THE ADDITION OF LAND CONTIGUOUS TO AN EXISTING EASEMENT.

THE LANDOWNER OF RECORD AT THE TIME OF EASEMENT SALE MAY, AT ANY TIME AFTER EASEMENT SALE, REQUEST A TENANT HOME IN ACCORDANCE WITH CONDITIONS ESTABLISHED WITHIN THE FREDERICK COUNTY ZONING ORDINANCE FOR TENANTS ACTIVELY ENGAGED IN THE FARMING OPERATION. THIS REQUEST SHALL BE SUBMITTED TO THE DEPARTMENT FOR APPROVAL, SUBJECT TO THE REVIEW AND RECOMMENDATION OF THE FREDERICK COUNTY AGRICULTURAL ADVISORY BOARD.

SUBJECT TO THE SUCCEEDING PARAGRAPH A LANDOWNER WHO SELLS AN EASEMENT THROUGH THE INSTALLMENT PURCHASE PROGRAM MAY REQUEST A TWO (2) ACRE LOT EXCLUSION FOR THE EXCLUSIVE RESIDENTIAL USE OF THE OWNER AND EACH OF THE CHILDREN OF THE OWNER AS LONG AS THE ORIGINAL OWNER CONTINUES TO OWN THE LAND. THIS RIGHT SHALL NOT CONVEY TO SUBSEQUENT LANDOWNERS.

THE TOTAL NUMBER OF LOT EXCLUSIONS FOR THE OWNER AND CHILDREN MAY NOT EXCEED 1 DWELLING UNIT PER 50 ACRES WITH A MAXIMUM LOT SIZE OF 2 ACRES. A LANDOWNER MAY ELECT TO RELINQUISH THE ABILITY TO EXCLUDE ALL CHILDREN'S/OWNER'S LOTS FOR THE RIGHT TO EXCLUDE ONE LOT WHICH MAY BE CONVEYED TO PERSONS NOT AN OWNER OR CHILD OF THE OWNER. THE MAXIMUM 2-ACRE LOT SHALL INCLUDE ALL COUNTY RIGHT-OF-WAY REQUIREMENTS. IN ADDITION, ANY LANDOWNER OF AN EASEMENT REQUESTING A LOT EXCLUSION SHALL BE REQUIRED TO REPAY THE COUNTY FOR THAT LOT. THIS REPAYMENT SHALL BE EQUAL TO THE AMOUNT PAID PER ACRE BY THE COUNTY TO THE LANDOWNER.

(K) *USES OF LAND UNDER AGRICULTURAL PRESERVATION EASEMENT.* PROPERTY UNDER AGRICULTURAL PRESERVATION EASEMENT SHALL BE MAINTAINED IN AGRICULTURE USE. A LANDOWNER MAY REQUEST ACCESSORY, AND COMPATIBLE COMMERCIAL USES TO AN AGRICULTURAL USE OF THE PROPERTY, AS PERMITTED UNDER THE FREDERICK COUNTY ZONING ORDINANCE, PROVIDED THAT SUCH USE DOES NOT AFFECT THE AGRICULTURAL INTEGRITY OF THE PROPERTY, MINIMIZES THE USE OF PRODUCTIVE AGRICULTURAL LAND AND FULFILLS THE PURPOSE AND INTENT OF THE AGRICULTURAL PRESERVATION EASEMENT.

SUCH A REQUEST SHALL BE SUBMITTED TO THE DEPARTMENT AND REVIEWED BY THE ADVISORY BOARD WHO SHALL MAKE SPECIFIC FINDINGS IN EACH REQUEST AS TO THE APPROPRIATENESS OF SUCH USE AND THE IMPACT ON THE AGRICULTURAL USE OF THE PROPERTY.

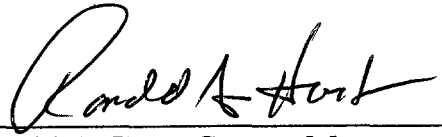
ACCESSORY AND COMPATIBLE COMMERCIAL USES MUST CONFORM TO EXISTING REGULATIONS AND ORDINANCES.

THE UNDERSIGNED HEREBY CERTIFIES that the foregoing ordinance was approved and adopted by the Board of County Commissioners of Frederick County,

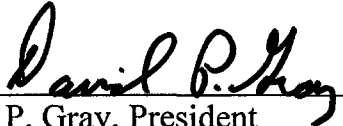
Maryland on the 15th day of January, 200~~1~~², and shall be effective on February 1, 2002.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND



Ronald A. Hart, County Manager

By: 

David P. Gray, President

MSC 1/17/02